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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.B., a Person Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JUSTIN B.,

Defendant and Appellant.

D062788

(Super. Ct. No. J518437)

APPEAL from an order of the Superior Court of San Diego County, Ronald F.

Frazier, Judge. Affirmed.

Justin B. appeals a placement order made at a dispositional hearing under Welfare and Institutions Code<sup>1</sup> sections 361 and 361.3. Justin contends the court abused its discretion when it denied his request to place his son, J.B., with a relative. We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

Justin B. and Nathalie A.<sup>2</sup> are the parents of J.B., born in May 2009. In June 2012, the San Diego County Health and Human Services Agency (Agency) detained J.B. in protective custody after Nathalie was arrested on drug charges. Nathalie has a history of heroin addiction. When arrested, she tested positive for heroin, methamphetamine, amphetamine, opiates and morphine. Justin is a registered narcotics offender. He has an extensive criminal history, including possession of narcotics, vehicle theft, forgery, being a felon in possession of a firearm and burglary. Shortly after J.B. was detained, Justin was sentenced to serve four years in state prison, with the possibility of release after two years.

J.B. was detained with his maternal grandparents. His grandfather's health was poor and he could not care for J.B. long-term. The Agency then placed J.B. in foster care. J.B. had behavioral issues, including emotional reactivity, attention deficit and aggression. He was referred to services for behavioral management, healthy development services and child enrichment.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

<sup>2</sup> Nathalie does not appeal.

Before the jurisdictional hearing, Nathalie entered and promptly left an inpatient substance abuse treatment program. After relapsing, she entered a second inpatient substance abuse treatment program.

In July 2012, the social worker initiated relative home evaluations to locate a relative placement for J.B. J.B.'s maternal grandmother had an extensive criminal history, including drug charges, and was not an appropriate placement option for J.B. The Agency approved the home of Justin's sister (Aunt B.) for placement. Aunt B. lived approximately four hours by car from San Diego.

The contested dispositional hearing was held on August 23, 2012. The only disputed issue was J.B.'s placement. The court admitted the Agency's reports in evidence and accepted Justin's stipulated testimony.

Justin asked the court to immediately place J.B. with Aunt B. He believed Aunt B. was able to provide a safe home to J.B. Justin worried that if Nathalie did not reunify with J.B., he would languish in the dependency system.

The social worker did not support J.B.'s placement with Aunt B. Although Aunt B. was willing to transport Justin to San Diego twice a week to see his mother, the trip was approximately four hours each way by car. Aunt B. had not seen J.B. for approximately one year and did not have an established relationship with him. Nathalie appeared to be doing well in treatment. The social worker recommended J.B. remain in foster care to facilitate contact with his mother and to allow him to participate in a developmental enhancement program in San Diego.

Nathalie initially supported placing J.B. with Aunt B. but changed her mind after realizing the out-of-county placement would impede her visitation with her son. At the hearing, she objected to the placement.

The juvenile court removed J.B. from the custody of his parents. The court found that J.B.'s placement with his aunt would be detrimental to him because the placement would not promote family reunification. The court ordered the Agency to place J.B. in foster care with family reunification services.

### DISCUSSION

Justin contends the juvenile court abused its discretion when it did not place J.B. with his paternal aunt. Detailing Nathalie's relapses and missteps in the two months before the jurisdictional hearing, he argues Nathalie's progress in treatment was too speculative to overcome the relative placement preference. Justin asserts placement with Aunt B. would facilitate his and J.B.'s visitation because her home was two and a half hours from the prison in which he was incarcerated.

When a child is removed from parental custody, the Legislature prefers placement with the child's relatives. (*In re Antonio G.* (2007) 159 Cal.App.4th 369, 376-377.) Relatives are given preferential consideration for placement. (§§ 361.3, subd. (a), 16000, subd. (a) & 16501.1, subd. (c)(1).)

Before a child may be placed in a relative's home, the social worker must assess the appropriateness of the placement. (§ 361.4, subd. (a).) The relative's home must meet the same safety standards used in licensing foster homes. (§§ 309, subd. (d), 361.3, subd. (a)(8) & 16501.1, subd. (c)(1).) If the person has no criminal record (other than

minor traffic violations), the social worker and the court may consider the home for placement of the child under section 361.3. (§ 361.4, subd. (d)(1).)

In considering whether to place the child with a relative, section 361.3 directs the social worker and court to consider the best interests of the child, including the child's special physical, psychological, educational, medical or emotional needs; the wishes of the parent, the relative and child, if appropriate; the proximity of the placement to the natural parents to facilitate visitation and family reunification;<sup>3</sup> the nature and duration of the relationship between the child and the relative; the relative's desire to provide legal permanency for the child if reunification is unsuccessful; and the safety of the relative's home. (§ 361.3, subd. (a).) In addition, the social worker and the court assess the ability of the relative to: provide a safe, secure and stable environment for the child; exercise proper and effective care and control of the child; provide a home and the necessities of life for the child; protect the child from his or her parents; facilitate court-ordered reunification efforts with the parents, visitation with the child's other relatives and implementation of all elements of the case plan; provide legal permanence for the child if reunification fails; and arrange for appropriate and safe child care, as necessary. (§ 361.3, subd. (a)(7).)

We review the juvenile court's placement decision under section 361.3 for abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) The juvenile court did not abuse its discretion when it denied Justin's request to place J.B. with Aunt B.

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<sup>3</sup> See Family Code section 7950. (§ 361.3, subd. (a)(3).)

Under section 361.3, the court is required to consider the proximity of the placement to the natural parents to facilitate visitation and family reunification. (Fam. Code, § 7950.) Aunt B. did not live in San Diego County. Although she was willing to drive J.B. to San Diego twice a week to visit his mother, such an arrangement would require J.B. to spend at least 16 hours in a car every week. The placement would not reasonably support increasingly liberal visitation between J.B. and his mother, commensurate with the child's best interests and goal of family reunification. (Cf. *In re Anthony T.* (2012) 208 Cal.App.4th 1019, 1031.) Considering the travel time, J.B.'s age and the limitations on Nathalie's freedom of movement imposed by her inpatient substance abuse treatment program, the court could reasonably conclude that placement with Aunt B. was not within reasonable proximity to Nathalie's home. (Cf. *In re Anthony T.*, at p. 1032.)

In addition, we are not persuaded by Justin's argument that placement with Aunt B. would facilitate his visitation with J.B. The prison in which Justin is incarcerated is closer to San Diego than it is to Aunt B.'s home.<sup>4</sup> Further, Justin's reunification with J.B., although possible, is unlikely considering the length of Justin's sentence, his need to stabilize his circumstances once released, and the statutory limitations on the length of time a dependent child can remain in a temporary placement. (See §§ 361.5, subd. (b), 366.21 & 366.22.)

We are not persuaded by Justin's argument the court should give less consideration to Nathalie's desire to reunify with J.B. because her record of compliance with noncourt-

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<sup>4</sup> We take judicial notice of the approximate distance between San Diego and Chino, and between Chino and Tehachapi.

ordered services prior to the dispositional hearing was mixed. The juvenile court was required to consider Nathalie's wishes--as well as Justin's--concerning J.B.'s placement. (§ 361.3, subd. (a)(2).) The record shows that at the time of the dispositional hearing, Nathalie appeared to be doing well in substance abuse treatment. She opposed the out-of-county relative placement because it would impede visitation and family reunification. The court did not abuse its discretion when it considered Nathalie's wishes for placement.

The juvenile court was also required to consider the nature and duration of the relationship between J.B. and Aunt B. (§ 361.3, subd. (a)(6).) The uncontroverted evidence shows that Aunt B. had not visited or talked with J.B. for approximately one year. J.B. would have been just two years old the last time he had any contact with Aunt B. Because of J.B.'s age and the absence of any recent contact with Aunt B., the court could reasonably conclude that she was likely to be a stranger to him.

Under section 361.3, the linchpin is whether placement with a relative is in the best interests of the child. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 862-863.) The court considered the factors that would support a relative placement. The court reasonably concluded that J.B.'s placement in a San Diego County foster home was in his best interests because it would facilitate visitation and reunification with his mother. (§ 361.3, subd. (a)(3); Fam. Code, § 7950.)

#### DISPOSITION

The order is affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

HUFFMAN, J.